

Message Text

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DRAFTED BY L:MLEIGH/SMSCHWEBEL

APPROVED BY L:MONROE LEIGH

S/S -FVORTIZ

S:LPBREMER(SUBS)

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FM SECSTATE WASHDC

TO USDEL SECRETARY FLASH

C O N F I D E N T I A L STATE 233935 TOSEC 140085

EXDIS

E.O. 11652: GDS

TAGS: PFOR, IS, US, EG

SUBJECT:SECOND DRAFT STATEMENT FOR SFRC APPEARANCE ON
SINAI ACCORDS

FOR SECRETARY FROM LEIGH

1. TEXT OF SECOND DRAFT PROMISED IN TOSEC 140068 BEGINS
AT PARA 3 THIS MESSAGE. SISCO THINKS YOU SHOULD DRAW
UPON BOTH HIS DRAFT AND ONE WHICH FOLLOWS IN PREPARA-
TION FOR TESTIMONY TOMORROW, SINCE LATTER CONTAINS SOME
ARGUMENTATION NOT FOUND IN FORMER.
2. AS SOON AS WE RECEIVE TEXT OF SISCO DRAFT, WE WILL
CABLE COMMENTS ON LEGAL POINTS.
3. BEGIN TEXT: IN MY PRIOR APPEARANCES BEFORE THIS
COMMITTEE, I HAVE EMPHASIZED TO THE MEMBERS THE IMPORTANCE
OF THE RECENTLY SIGNED SINAI ACCORD. THE SIGNING OF THIS
ACCORD WAS NOT ONLY A SIGNIFICANT ACT OF ITSELF, PROVIDING
AS IT DOES FOR THE WITHDRAWAL OF ISRAELI FORCES FROM
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PORTION OF OCCUPIED AREAS AND THE AFFIRMATION OF
OBLIGATIONS BY BOTH PARTIES REGARDING RENUNCIATION OF
THE USE OF FORCE, BUT ALSO, AND MORE IMPORTANTLY, IT WAS
A HARD FIRST STEP IN THE DIRECTION THAT BOTH PARTIES

MUST MOVE IF LASTING PEACE IS TO BE FOUND IN AN AREA WHICH HAS BEEN AFFLICTED WITH WARS AND THREATS OF WARS FOR MORE THAN TWENTY-FIVE YEARS. INDEED, THE SIGNIFICANCE OF THE SINAI ACCORD LIES MORE IN THE POSSIBILITIES WHICH IT OPENS UP FOR FURTHER STEPS IN THE FUTURE THAN IT DOES IN THE HARD FIRST STEP ALREADY TAKEN.

4. THE BALANCE OF FORCES IN THE MIDDLE EAST IS STILL PRECARIOUS; IT SHOULD NOT BE ASSUMED THAT BECAUSE THE EGYPTIAN-ISRAELI AGREEMENT WAS SIGNED EARLY LAST MONTH THE URGENCY OF FINDING A SOLUTION IN THE MIDDLE EAST HAS DIMINISHED. ON THE CONTRARY, THE SITUATION IN THE MIDDLE EAST REMAINS EXPLOSIVE.

5. I AM WELL AWARE OF THIS COMMITTEE'S CONCERN ABOUT THE PUBLICATION OF CERTAIN OF THE DOCUMENTS WHICH HAVE BEEN FURNISHED TO THE COMMITTEE AND ITS DESIRE TO ASSURE ITSELF THAT THE COMMITTEE HAS CONSIDERED EVERY DOCUMENT TRULY RELEVANT TO THE CONSIDERATION OF THE U.S. PROPOSAL FOR AN EARLY WARNING SYSTEM.

6. WE HAVE MADE, I BELIEVE, AN HISTORICALLY UNPRECEDENTED EFFORT TO MEET THE COMMITTEE'S CONCERNS. WE HAVE SUPPLIED TO THE COMMITTEES OF CONGRESS ON A CLASSIFIED BASIS SOME OF THE MOST SENSITIVE MATERIAL KNOWN TO THE DIPLOMATIC PROCESS AND, INCIDENTALLY AMONG THESE DOCUMENTS, MATERIAL FROM THE RECORD OF THE SINAI NEGOTIATIONS OF THE VERY CATEGORY WHICH PRESIDENT WASHINGTON DECLINED TO FURNISH TO THE HOUSE OF REPRESENTATIVES IN HIS FAMOUS LETTER OF REFUSAL IN 1794.

7. TO GO FURTHER THAN WE HAVE ALREADY GONE IN MAKING SENSITIVE MATERIALS AVAILABLE TO THE COMMITTEE WOULD RAISE PROBLEMS OF TRANSCENDENT IMPORTANCE TO THE INTEGRITY OF THE PROCESSES AND THUS THE SUBSTANCE OF OUR FOREIGN POLICY.

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8. THE FIRST PROBLEM IS THAT IT WOULD EXPOSE TO THE RISK OF COMPROMISE DIPLOMATIC EXCHANGES WHICH IF MADE PUBLIC WOULD IN ALL PROBABILITY UPSET THE PRECARIOUS BALANCE OF POLITICAL FORCES IN THE MIDDLE EAST WHICH I REFERRED TO ABOVE. WHILE I AM SECRETARY OF STATE I WILL NOT ADVISE OR RECOMMEND THAT THE PRESIDENT RUN THESE RISKS. THE DANGERS TO AMERICAN INTERESTS AND THE INTERESTS OF OUR FRIENDS IN THE MIDDLE EAST IS TOO GREAT. I CANNOT FAIL TO TAKE ACCOUNT OF THE FACT THAT ALL OF THE CLASSIFIED DOCUMENTATION WHICH WE FURNISHED TO THIS COMMITTEE AND TO THE HOUSE INTERNATIONAL RELATIONS COMMITTEE HAS FOUND ITS WAY INTO THE PAGES OF THE LARGE METROPOLITAN DAILIES. THESE UNAUTHORIZED

DISCLOSURES HAVE HAD A STRONGLY PREJUDICIAL EFFECT ON THE SITUATION IN THE MIDDLE EAST AND ON OUR PROSPECTS FOR CAPITALIZING ON WHAT MAY BE A FLEETING OPPORTUNITY FOR SIGNIFICANT FURTHER STEPS TOWARD A PERMANENT PEACE IN THE AREA.

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9. THERE IS, HOWEVER, A SECOND PROBLEM IN CONNECTION WITH THE DEMAND FOR FURTHER SENSITIVE DOCUMENTATION. ACQUIESCENCE IN THIS DEMAND WOULD ESTABLISH A PRECEDENT WHICH WOULD IN MY CONSIDERED OPINION GRAVELY IMPAIR THE ABILITY OF THE PRESIDENT TO DISCHARGE HIS CONSTITUTIONAL RESPONSIBILITIES FOR THE CONDUCT OF FOREIGN RELATIONS. SUCCESS IN THE CONDUCT OF FOREIGN POLICY DEPENDS ON THE CONFIDENTIALITY OF PRESIDENTIAL EXCHANGES WITH OTHER GOVERNMENTS. CONFIDENTIALITY NEED NOT BE MAINTAINED FOREVER; INDEED, NO GOVERNMENT IN THE WORLD PUBLISHES THE RECORDS OF ITS DIPLOMATIC HISTORY SOONER AND MORE FULLY THAN THE UNITED STATES. BUT CONFIDENTIALITY MUST BE MAINTAINED, IN SOME CASES FOR A SHORT PERIOD, IN OTHER CASES, FOR A LONGER PERIOD. IF OTHER GOVERNMENTS BECOME AWARE THAT THEIR MOST SENSITIVE DIPLOMATIC EXCHANGES WITH THE PRESIDENT WILL BE SUBJECT TO PREMATURE DISCLOSURE OUTSIDE THE NARROW CONFINES OF THE PRESIDENTIAL OFFICE, THOSE GOVERNMENTS WILL NOT BE WILLING TO ENGAGE IN CONFIDENTIAL EXCHANGES WITH THE UNITED STATES. THE PRESIDENT WILL BE UNABLE TO UTILIZE AN ESSENTIAL INSTRUMENT FOR THE CONDUCT OF DIPLOMACY AND THE IMPLEMENTATION OF FOREIGN CONFIDENTIAL

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POLICY: AN INSTRUMENT THAT DEPENDS UPON CONFIDENCE IN THE FIDELITY AND DISCRETION OF THE AUTHORIZED REPRESENTATIVES OF THE UNITED STATES. ANY DEMAND BY THE CONGRESS FOR SENSITIVE DIPLOMATIC EXCHANGES WOULD INFRINGE UPON THE CONSTITUTIONAL PREROGATIVES AND OBLIGATION OF THE PRESIDENT TO CONDUCT THE FOREIGN RELATIONS OF THE UNITED STATES. ON

GROUND OF PRINCIPLE, I WILL NOT AS SECRETARY OF STATE ADVISE THE PRESIDENT TO COMPROMISE HIS CONSTITUTIONAL PREROGATIVE AND IMPAIR HIS ABILITY TO MEET HIS CONSTITUTIONAL OBLIGATIONS. ON GROUND OF PRACTICE -- OF THE VIABILITY OF THE DIPLOMACY OF THE UNITED STATES -- I CAN ONLY ADVISE THE PRESIDENT TO MAINTAIN THE CONFIDENTIALITY OF THOSE DIPLOMATIC COMMUNICATIONS WHOSE CONTENT REQUIRES CONFIDENTIALITY. I SAY THAT WITH THE UTMOST RESPECT FOR THE CONSTITUTIONAL ROLE OF THE CONGRESS AND FOR THE DEDICATED MEN AND WOMEN WHO MAKE UP ITS PRESENT MEMBERSHIP.

10. THIS IS NOT TO SAY THAT THE EXECUTIVE DOES NOT HAVE A CONSTITUTIONAL OBLIGATION TO PROVIDE THE CONGRESS WITH THE TEXTS OF INTERNATIONAL AGREEMENTS

TO WHICH THE UNITED STATES IS A PARTY. THIS OBLIGATION WE RECOGNIZE, OF COURSE, WHETHER THE AGREEMENT IS IN THE FORM OF A TREATY OR OF AN EXECUTIVE AGREEMENT. HOWEVER, WITH RESPECT TO THE SINAI ACCORD WE HAVE FURNISHED THE TEXT OF EVERY DOCUMENT WHICH IN OUR JUDGMENT GIVES RISE TO AN INTERNATIONAL COMMITMENT OR CONSTITUTES AN INTERNATIONAL AGREEMENT. WE HAVE HELD BACK NOTHING WHICH WOULD FALL WITHIN THE SCOPE OF THE CASE ACT OR EVEN WITHIN THE SCOPE OF THE NATIONAL COMMITMENTS RESOLUTION. INDEED, WE HAVE FURNISHED SOME DOCUMENTS WHICH, ALTHOUGH ADMITTEDLY RELEVANT, HAVE NOT YET BECOME INTERNATIONAL AGREEMENTS BECAUSE THEY AWAIT SIGNATURE, THAT IS, THE MEMORANDA OF AGREEMENT BETWEEN THE UNITED STATES AND ISRAEL.

11. AMONG THE DIPLOMATIC COMMUNICATIONS WHOSE TEXTS ARE NOW BEING SOUGHT ARE HIGHLY SENSITIVE DOCUMENTS WHICH RELATE TO ONGOING NEGOTIATIONS IN THE MIDDLE CONFIDENTIAL

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EAST. THIS PARTICULAR MATERIAL IS TOO DELICATE TO DISCLOSE. IF IT WERE TO BE DISCLOSED, ONGOING NEGOTIATIONS COULD GO BACKWARD RATHER THAN FORWARD; THEY

EVEN COULD COLLAPSE ALTOGETHER. THE DOCUMENTS IN QUESTION CONTAIN NOTHING WHICH CONSTITUTES AN INTERNATIONAL AGREEMENT BINDING ON THE CONGRESS OR ON THE UNITED STATES AS A GOVERNMENT. HOWEVER, PUBLIC DISCLOSURE OF THESE ITEMS WOULD GRAVELY PREJUDICE OUR ABILITY TO CONTINUE THE PROCESS OF STEP-BY-STEP NEGOTIATION WHICH WE ARE CONVINCED HOLDS THE BEST HOPE FOR SUCCESS IN THE MIDDLE EAST. DISCLOSURE WOULD DRIVE THE ARAB STATES AND ISRAEL APART; IT WOULD UNDERMINE THE MEN OF PEACE AND PROMOTE THE RESUMPTION OF WAR.

12. MY ATTENTION HAS BEEN DRAWN TO ONE OF THE EARLIEST CONSTITUTIONAL PRECEDENTS WHICH EXISTS ON THE RELATIONSHIP BETWEEN THE CONGRESS AND THE PRESIDENT IN THE FIELD OF FOREIGN POLICY, NAMELY, THE REQUEST BY THE HOUSE OF REPRESENTATIVES IN 1794 THAT PRESIDENT WASHINGTON SUPPLY THE CORRESPONDENCE "AND OTHER DOCUMENTS RELATIVE TO THAT (THE JAY) BEGIN UNDERLINE. TREATY EXCEPTING SUCH OF SAID PAPERS AS ANY EXISTING NEGOTIATION MAY RENDER IMPROPER TO BE DISCLOSED." END UNDERLINE. I CALL PARTICULAR ATTENTION TO THE EXCEPTION CLAUSE. EVEN IN MAKING A DEMAND WHICH THE PRESIDENT IN FACT LATER REJECTED, THE HOUSE OF REPRESENTATIVES EXCEPTED FROM THAT DEMAND ITEMS RELATING TO ON-GOING NEGOTIATIONS. A NUMBER OF THE DOCUMENTS WHICH ARE NOW BEING DEMANDED BY SOME SENATORS FALL PRECISELY

IN THIS CATEGORY. THEIR DISCLOSURE WOULD GRAVELY PREJUDICE OUR OPPORTUNITIES FOR NEGOTIATING FURTHER STE-BY-STEP APPROACH TO GENERAL PEACE IN THE MIDDLE EAST. THEY WOULD EQUALLY PREJUDICE THE OPPORTUNITIES FOR PEACE OF ARABS AND ISRAELIS.

13. THE LATEST MEMORANDA OF AGREEMENT WITH ISRAEL ARE SIMILAR TO EARLIER MEMORANDA OF UNDERSTANDING WITH ISRAEL WHICH HAVE BEEN SENT TO THE CONGRESS
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UNDER THE CASE ACT. THUS, IN JANUARY 1974 FOLLOWING THE SUCCESSFUL CONCLUSION OF THE DISENGAGEMENT AGREEMENT, WE TRANSMITTED UNDER THE CASE ACT A MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES AND ISRAEL WHICH WAS DATED JANUARY 18, 1974. LIKE THE LATEST MEMORANDA OF AGREEMENT, THE JANUARY 18, 1974 MEMORANDUM OF UNDERSTANDING CONTAINED PROVISIONS RELATING TO AID; TO ASSURANCES FROM EGYPT THROUGH THE UNITED STATES TO ISRAEL; TO DIRECT U.S. ASSURANCES TO ISRAEL OF DIPLOMATIC SUPPORT WITH RESPECT TO SUCH MATTERS AS THE STRAITS OF BAB-EL-MANDEB; TO U.S. DIPLOMATIC ACTIONS IN THE EVENT OF VIOLATIONS OF THE CONTEMPORANEOUS AGREEMENT BETWEEN EGYPT AND ISRAEL; TO U.S. POLICY OR INTENTION WITH RESPECT TO THE GENEVA CONFERENCE; TO THE U.S. POSITION ON THE WITHDRAWAL OF THE UNITED NATIONS EMERGENCY FORCE. IN PARTICULAR, PARAGRAPH 9 OF THE JANUARY 18, 1974 MEMORANDUM OF UNDERSTANDING PROVIDED THAT THE UNITED STATES WILL MAKE EVERY EFFORT TO BE FULLY RESPONSIVE ON A CONTINUING AND LONG-TERM BASIS TO ISRAEL'S MILITARY REQUIREMENTS. INDEED THE LANGUAGE OF THE JANUARY 1974 UNDERSTANDING IS CLOSELY PARALLEL TO PARAGRAPH 1 OF THE LATEST MEMORANDUM OF AGREEMENT EXCEPT THAT THE LATTER IS, IF ANYTHING, MORE GUARDED. THE SAME MAY BE SAID OF THE MEMORANDUM OF UNDERSTANDING OF THE UNITED STATES AND ISRAEL CONCLUDED ON SEPTEMBER 16, 1974, FOLLOWING THE DISENGAGEMENT AGREEMENT BETWEEN ISRAEL AND SYRIA, COPIES OF WHICH WERE TRANSMITTED UNDER THE CASE ACT ON A CLASSIFIED BASIS.

14. BUT THIS LANGUAGE DOES NOT LEGALLY COMMIT THE CONGRESS OR THE UNITED STATES UNDER EITHER AGREEMENT TO SUPPLY MILITARY AID -- ONLY TO CONSIDER IT. CONGRESS IN PARTICULAR IS PERFECTLY FREE TO WORK ITS WILL ON ANY AID PROPOSAL WHICH THE EXECUTIVE MAY SUBMIT FOR AID TO ISRAEL.

15. THE LANGUAGE CALLING FOR THE UNITED STATES TO USE BEST EFFORTS TO BE FULLY RESPONSIVE TO ISRAEL'S NEEDS FOR MILITARY AID IS NO MORE THAN A CONFIRMATION

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OF THE POLICY WHICH WE HAVE FOLLOWED FOR YEARS. THE CONGRESS AND THE PRESIDENT HAVE EACH PARTICIPATED IN THE FORMULATION AND IMPLEMENTATION OF THAT POLICY.

IT DOES NOT SEEM TO ME THAT ANYTHING IN THE MEMORANDA OF AGREEMENT CHANGES WHAT HAS BEEN OUR LONG-STANDING POLICY. LOOKING BACK, I DO NOT SEE THAT PARAGRAPH 9 OF THE EARLIER UNDERSTANDING OF JANUARY 18, 1974 CAN BE SAID TO HAVE CAUSED ANY CHANGE IN OUR POLICY ON AID DURING THE LAST YEAR AND A HALF. NOR WOULD I EXPECT THE OPENING PARAGRAPHS OF THE LATEST AGREEMENT WITH ISRAEL TO CHANGE OUR ONGOING POLICY IN THIS RESPECT.

16. IN ANY EVENT, IF ANY SUCH REQUEST REQUIRES EITHER AUTHORIZATION OR APPROPRIATION, THEN THE AGREEMENT BY ITS SPECIFIC TERMS REQUIRES SEPARATE AND INDEPENDENT ACTION BY CONGRESS. THERE IS NO LEGAL COMMITMENT IN THE AGREEMENT OR IN ANY OF THE OTHER DOCUMENTS WHICH REQUIRES CONGRESS TO ACT. TO PUT THE MATTER BLUNTLY, ISRAEL HAS TAKEN THE RISK OF CONGRESSIONAL INACTION, ALBEIT WITH THE KNOWLEDGE THAT THERE IS LONG-STANDING SYMPATHY IN CONGRESS FOR ITS CAUSE.

17. THE UNDERTAKINGS IN THE MEMORANDUM OF AGREEMENT WITH RESPECT TO MAKING OIL AVAILABLE FOR PURCHASE BY ISRAEL ON A CASH AND CARRY BASIS IN THE EVENT OF EMBARGO ARE ADMITTEDLY OF A SOMEWHAT DIFFERENT CHARACTER. THEIR PERFORMANCE WILL NOT UNDER PRESENT LAW REQUIRE CONGRESSIONAL ACTION, AND THE UNITED STATES IS AUTHORIZED UNDER CURRENT LAW TO MAKE AND IF NEEDS BE IMPLEMENT THESE UNDERTAKINGS. IT SHOULD BE NOTED THAT, IN ANY EVENT, ISRAELI DOMESTIC CONSUMPTION IS RELATIVELY SMALL COMPARED TO TOTAL SUPPLIES AVAILABLE TO THE UNITED STATES. ASSURANCE TO ISRAEL ON THIS VITAL ISSUE OBVIOUSLY HAD AN IMPORTANT BEARING ON ISRAELI ACCEPTANCE OF THE BASIC AGREEMENT.

18. APART FROM THE FOREGOING, ALL THE OTHER PROVISIONS OF THE MEMORANDUM OF AGREEMENT FALL IN THE CATEGORY OF ACTIONS WHICH THE PRESIDENT IS AUTHORIZED TO CONDUCT OUR DIPLOMATIC RELATIONS. THESE FALL IN THE CATEGORY OF STATEMENTS OF POLICY OR INTENTION NOT NORMALLY CONSIDERED INTERNATIONAL AGREEMENTS.

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SIONS OF THE MEMORANDUM OF AGREEMENT FALL IN THE CATEGORY OF ACTIONS WHICH THE PRESIDENT IS AUTHORIZED TO CONDUCT OUR DIPLOMATIC RELATIONS. THESE FALL IN THE CATEGORY OF STATEMENTS OF POLICY OR INTENTION NOT NORMALLY CONSIDERED INTERNATIONAL AGREEMENTS.

IN ANY EVENT THEY ARE WELL WITHIN THE PRESIDENT'S
INDEPENDENT AUTHORITY.

19. I RECOGNIZE THAT SPECIAL ATTENTION HAS BEEN
FOCUSED BY SOME MEMBERS ON PARAGRAPH 10 OF THE
MEMORANDUM OF AGREEMENT WITH ISRAEL. FRANKLY, I
HAVE BEEN SURPRISED THAT THE LANGUAGE OF THIS PARA-
GRAPH, WHICH IN ITS OPERATIVE SECTION DOES NO MORE
THAN SAY THE PRESIDENT WILL CONSULT WITH ISRAEL
IN THE EVENT ITS SECURITY IS THREATENED BY A WORLD
POWER, SHOULD HAVE BEEN CONSIDERED BY SOME TO BE
APPROPRIATE ONLY FOR A SECURITY TREATY. IN THE
EVERYDAY PRACTICE OF DIPLOMACY NATIONS AGREE TO
CONSULT ON HUNDREDS OF SUBJECTS. MOREOVER, IRRESPECTIVE
OF PARAGRAPH 10, WE WOULD SURELY CONSULT WITH
ISRAEL IF SHE WERE THREATENED. BUT I GATHER THE CON-
CERN WITH PARAGRAPH 10 RESTS AS WELL ON THE PRECEDING
SENTENCE, WHICH SPEAKS OF "THE LONG-STANDING UNITED
STATES COMMITMENT TO THE SURVIVAL AND SECURITY OF
ISRAEL" AND THEN SAYS THE U.S. WOULD TAKE A GRAVE
VIEW OF ANY THREAT TO ISRAEL FROM A WORLD POWER.
BOTH PARTS OF THAT SENTENCE IN MY VIEW ARE NO MORE
THAN A RESTATEMENT OF EXISTING UNITED STATES POLICY
AS DEVELOPED JOINTLY BY PRESIDENTS AND CONGRESSES
SINCE 1948 IN A VAREITY OF WAYS, SUCH AS IN THE
MIDDLE EAST RESOLUTION OF 1957, WHICH IS A PART OF
THE LAW OF THE LAND. ANOTHER STATEMENT IS FOUND IN
PUBLIC LAW 91-411 AS FOLLOWS:

"THE CONGRESS VIEWS WITH GRAVE CONCERN THE
DEEPENING INVOLVEMENT OF THE SOVIET UNION IN THE
MIDDLE EAST AND THE CLEAR AND PRESENT DANGER TO
WORLD PEACE RESULTING FROM SUCH INVOLVEMENT WHICH
CANNOT BE IGNORED BY THE UNITED STATES."

IF I WERE IN AN ARGUMENTATIVE MOOD, I MIGHT CONTENT
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THAT THE LANGUAGE I HAVE JUST QUOTED IS MORE FAR
REACHING IN ITS TERMS THAN ANYTHING IN PARAGRAPH 10
OF THE MEMORANDUM OF AGREEMENT.

20. FINALLY, I SINCERELY BELIEVE, WITH ALL RESPECT TO
THOSE OF YOU WHO MAY DISAGREE, THAT AN UNDERTAKING
MERELY TO CONSULT IS FAR, FAR DIFFERENT FROM ANY
SECURITY TREATY THE UNITED STATES IS PARTY TO.

21. I TURN NOW TO A QUESTION WHICH I RECOGNIZE HAS
CAUSED CONSIDERABLE CONCERN AMONG THE MEMBERS. WHETHER,
IF THE CONGRESS APPROVES THE PROPOSAL, IT WILL THEREAFTER
HAVE NO CHOICE EXCEPT TO APPROVE WITHOUT FURTHER ADO AND
IRRESPECTIVE OF CURRENT CIRCUMSTANCES THE REQUESTS FOR

AID WHEN REQUESTS ARE MADE FOR AID UNDER THE MEMORANDA OF AGREEMENT. I HAVE ALREADY POINTED OUT WHY THIS IS NOT TRUE UNDER THE LANGUAGE OF THE MEMORANDA OF AGREEMENT. THE ISRAELIS UNDER THE MEMORANDA OF AGREEMENT HAVE TAKEN THE RISK OF CONGRESSIONAL INACTION. BUT THEN IT IS FURTHER ARGUED THAT IF CONGRESS FAILS TO ACT ON AID REQUESTS, ISRAEL WILL BE ENTITLED TO REPUDIATE ITS UNDERTAKINGS UNDER THE BASIC AGREEMENT WITH EGYPT. THIS ARGUMENT IS TOTALLY WITHOUT FOUNDATION. NEITHER AS A PRACTICAL MATTER, NOR AS A LEGAL MATTER WILL ISRAEL BE JUSTIFIED IN REPUDIATING ITS UNDERTAKING TO WITHDRAW IF CONGRESS IN ITS WISDOM SHOULD IN THE FUTURE PROVIDE LESS AID THAN ISRAEL HAD REQUESTED OR EXPECTED.

22. IN THE FIRST PLACE, WITHDRAWAL WOULD ALREADY HAVE OCCURRED FROM THE DESIGNATED SINAI TERRITORIES. THUS AS A PRACTICAL MATTER, THE REPUDIATION WOULD BE WITHOUT PRACTICAL EFFECT.

23. IN THE SECOND PLACE, AS A POLITICAL MATTER, ISRAEL RECOGNIZES THAT ITS CASE FOR AID MUST BE MADE AND JUSTIFIED ON AN ANNUAL, YEAR-BY-YEAR BASIS WITH THE CONGRESS.

24. IN THE THIRD PLACE, THERE IS NO LEGAL RIGHT OF REPUDIATION IN THESE DOCUMENTS. THE UNITED STATES IS NOT A PARTY TO THE SINAI AGREEMENT BETWEEN ISRAEL AND CONFIDENTIAL

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EGYPT. THAT AGREEMENT RUNS BETWEEN ISRAEL AND EGYPT ONLY; THEY ARE THE ONLY SIGNATORIES TO THAT AGREEMENT; THEY ARE THE ONLY STATES THAT ARE BOUND BY IT. THE AGREEMENT REPEATEDLY SPEAKS OF THE OBLIGATIONS OF THE PARTIES"; AND IT IS BEYOND DISPUTE THAT THE PARTIES ARE EGYPT AND ISRAEL AND NO THIRD STATE. THE AGREEMENT DOES PROVIDE, IN AN ANNEX, THAT, IN THE BUFFER ZONE BETWEEN EGYPT AND ISRAEL IN WHICH THE UNITED NATIONS EMERGENCY FORCE WILL CONTINUE TO PERFORM ITS FUNCTIONS, THERE WILL BE ESTABLISHED AN EARLY WARNING SYSTEM ENTRUSTED TO UNITED STATES CIVILIAN PERSONNEL. A SEPARATE PROPOSAL OF THE UNITED STATES, FOR WHICH APPROVAL OF THE CONGRESS IS BEING SOUGHT, PROVIDES DETAILS OF THAT EARLY WARNING SYSTEM. THAT PROPOSAL IS DESCRIBED AS A PART OF THE AGREEMENT BETWEEN EGYPT AND ISRAEL; BUT THAT IN NO SENSE SAYS OR MEANS THAT THE UNITED STATES IS A PARTY TO THE

AGREEMENT BETWEEN EGYPT AND ISRAEL. IT IS AS IF FORD MOTOR COMPANY AGREES WITH THE CITY OF DETROIT TO PROVIDE BUSES FOR MUNICIPAL TRANSPORTATION CONTAINING GLASS BUILT TO ITS SPECIFICATIONS BY PITTSBURGH PLATE GLASS COMPANY. THE PARTIES TO THE CONTRACT ARE JUST FORD AND DETROIT -- EVEN THOUGH THEY BOTH WANT PITTSBURGH PLATE

GLASS AND PITTSBURGH PLATE GLASS COMPANY WISHES TO PROVIDE IT.

25. IN MY VIEW, THE ASSURANCES AND UNDERTAKINGS GIVEN BY THE UNITED STATES ON ITS OWN BEHALF IN THE MEMORANDA OF AGREEMENT WITH ISRAEL FALL ESSENTIALLY INTO TWO CATEGORIES. ONE IS ASSURANCES BY THE UNITED STATES OF ITS POLITICAL INTENTIONS. THE OTHER IS COMMITMENTS BY THE UNITED STATES WHICH ARE CONDITIONED ON EXISTING OR PRIOR AUTHORIZATION AND APPROPRIATION OF THE CONGRESS OF THE UNITED STATES. TAKEN TOGETHER, MIXED TOGETHER, THESE VARIOUS STATEMENTS OF POLITICAL INTENTION AND CONDITIONAL LEGAL COMMITMENTS COMPRISE EXECUTIVE AGREEMENTS. BUT THE CONTENT AND THE LEGALLY BINDING CHARACTER -- IF ANY -- OF THE DISPARATE ELEMENTS ON THOSE AGREEMENTS CAN ONLY BE UNDERSTOOD BY CONSIDERATION OF EACH, PARTICULAR ELEMENT. WHEN THOSE ELEMENTS ARE ANALYZED, IT IS CLEAR TO ME THAT THEY CONSTITUTE POLICY STATEMENTS, CONFIDENTIAL

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EXPRESSIONS OF POLITICAL INTENT ON THE PART OF THE UNITED STATES, AND COMMITMENTS WHICH, HOWEVER, WILL BE DEFINITELY UNDERTAKEN ONLY WHEN THE CONGRESS SO AGREES OR HAS ALREADY AGREED.

26. IN SHORT, MANY OF THE PROVISIONS OF THE DOCUMENTS IN QUESTION DO NOT BY ANY STANDARD RISE TO THE LEVEL OF INTERNATIONAL COMMITMENTS. THEY ARE NO MORE THAN STATEMENTS OF INTENTION TYPICAL OF DIPLOMATIC EXCHANGES. THIS IS NOT TO SAY THAT THE INTENTIONS OF THE UNITED STATES, AND THE STATEMENTS OF THOSE INTENTIONS, ARE NOT IMPORTANT. THEY ARE VERY IMPORTANT. LET US ENDEAVOR TO ENSURE THAT THEY CONTINUE TO BE. BUT THEY DO NOT BIND, AND ARE NOT UNDERSTOOD TO BIND, THE UNITED STATES.

27. THE TWO MEMORANDA OF AGREEMENT BETWEEN THE UNITED STATES AND ISRAEL WILL BE TRANSMITTED, AFTER SIGNATURE, IN ACCORDANCE WITH THE CASE ACT. THEY WILL BE TRANSMITTED TO THIS COMMITTEE AND TO THE COMMITTEE ON INTERNATIONAL RELATIONS OF THE HOUSE OF REPRESENTATIVES IN PURSUANCE OF THE PROVISIONS OF THE CASE ACT GOVERNING AGREEMENTS THE IMMEDIATE PUBLIC DISCLOSURE OF WHICH WOULD, IN THE OPINION OF THE PRESIDENT, BE PREJUDICIAL

TO THE NATIONAL SECURITY -- AND, I MAY ADD, THE DIPLOMATIC CAPACITY -- OF THE UNITED STATES.

28. I THINK IT IS BEYOND QUESTION THAT, IN THIS CASE, THE EXECUTIVE BRANCH HAS GIVEN THE CONGRESS EXTRAORDINARY ACCESS TO THE CONTENT OF THE DIPLOMATIC NEGOTIATIONS AS WELL AS THE TERMS OF THE ASSURANCES AND UNDERTAKINGS OF THE UNITED STATES. WE HAVE BEEN FORTHCOMING, NOT LEAST

BECAUSE WE WANT YOU TO BE FORTHCOMING. IT IS TIME --
IT IS PAST TIME -- FOR THE EXECUTIVE AND LEGISLATIVE
BRANCHES OF THIS GOVERNMENT TO ACT TOGETHER IN SUPPORT
OF AN EARLY WARNING PROPOSAL WHICH PROMISES TO MAKE A
SIGNIFICANT CONTRIBUTION TO THE MAINTENANCE OF INTER-
NATIONAL PEACE IN WHAT HERETOFORE HAS BEEN THE COCKPIT
OF WAR. THE STAKES ARE ENORMOUS: PEACE OR WAR IN THE
MIDDLE EAST, WITH ALL THAT IMPLIES; AND THE INVIGORATION
OR THE CASTRATION OF THE DIPLOMATIC POTENTIAL OF THE
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UNITED STATES. THE TIME FOR AFFIRMATIVE ACTION IS NOW.
INGERSOLL

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<< END OF DOCUMENT >>

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